

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

The specification has been amended to correct minor informalities noted on page 2 of the Office Action. Please note that "line 23" on page 2, line 23 has been changed to "line 21" (and not "line 24" as suggested in the Office Action).

Also, the Abstract has been changed to remove legal phraseology ("means" changed to "unit", "Disclosed" removed).

Furthermore, Figures 4 and 5 have been amended to include "Prior Art" labels on those figures, as requested in the Office Action.

Claims 2, 3, 7 and 8 are currently being cancelled.

Claims 1 and 4 are currently being amended.

Claims 9 and 10 are currently being added.

This amendment adds, cancels and amends claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1, 4-6 and 9-10 are now pending in this application.

In the Office Action, claims 3 and 7 were objected to because of a minor informality noted on page 3 of the Office Action. Claims 3 and 7 have been canceled, whereby the features of claim 3 that have been incorporated into presently pending claim 1 have corrected the minor informality noted in the Office Action.

In the Office Action, claims 1 and 3-6 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,404,774 to Jenness; claims 1 and 2 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S.

Patent No. 6,477,249 to Williamson et al.; and claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Williamson et al. in view of Jenness. These rejections, to the extent that they may be applied to the presently pending claims under rejection, are traversed for at least the reasons given below.

Jenness provides for a low frequency usage by an ADSL system when a communication partner is capable of communicating in a low frequency band, whereby Jenness does not determine if a communication line is part of a multiplex communication system (in which case the present invention does not allow the low frequency band to be used for ADSL communication, while presumably Jenness's system would allow such usage). Note that Jenness looks for on-hook and off-hook conditions for determining which times to allow low frequency usage for the ADSL system, which is different from the features recited in presently pending claim 1.

Also, Williamson describes a system which detects whether or not "suitable properties" exist in the POTS traffic in its determination of when to allow the ADSL system to use a low frequency band (see column 7, line 53 to column 8, line 4 of Williamson), which again is different from the features recited in presently pending claim 1.

Accordingly, presently pending claim 1, as well as its dependent claims, are patentable over the cited art of record.

New claims 9 and 10 have been added to recite the invention from a different perspective, based on Figure 3 of the drawings. Neither Jenness nor Williamson teaches or suggests such a communication between first and second modems to determine whether or not to open or close a switch (to allow or disallow low frequency communication between these modems) in accordance with whether or not a multiplex communication system is connected to one of the modems.

Accordingly, since there are no other objections or rejections raised in the Office Action, Applicant believes that the present application is now in condition for allowance, and an early indication of allowance is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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Date

Phillip J. Articola
Phillip J. Articola
Registration No. 38,819

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5300
Facsimile: (202) 672-5399